

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ERIC RODRIGUEZ,

Plaintiff,

v.

ORDER

14-cv-86-jdp

TIMOTHY HAINES, KEITH JANTZEN,
MARLA WALTERS, ROBERT HABLE
and KELLY TRUMM¹,

Defendants.

Plaintiff Eric Rodriguez was granted leave to proceed *in forma pauperis* in this case on his claims that defendants Haines, Jantzen, Walters, Hable and Trumm violated his due process rights under the Fifth and Fourteenth Amendments. On November 17, 2014 defendants filed an answer to plaintiff's complaint, raising various affirmative defenses. Now plaintiff has filed a response to the answer. *See* dkt. 25. Because the answer is not a pleading that requires a response, I will not consider plaintiff's reply.

Fed. R. Civ. P. 12(b) permits defendants to avoid litigation of a case if plaintiff's allegations of fact, even if accepted as true, would be insufficient to make out a legal claim against the defendants. Although the defendants denied many the statements in plaintiff's complaint and raised certain affirmative defenses in their answer, defendants have not filed a motion to dismiss. If they did, then plaintiff would be allowed to respond to it. Otherwise, it is not necessary for plaintiff to respond to defendant's answer. Indeed, Fed. R. Civ. P. 7(a)(7) forbids a plaintiff to submit a reply to an answer unless the court directs a reply to be filed. No such order will be made in this case. In addition, averments in pleadings to which a response

¹ I have amended the caption to identify "Sgt. Jantzen" as Keith Jantzen, "Ms. Walters" as Marla Walters, "R. Hable" as Robert Hable and "K. Trumm" as Kelly Trumm, which is how the defendants are identified in the Acceptance of Service.

is not allowed are assumed to be denied. *See* Fed. R. Civ. P. 8(b)(6). Because of those rules, this court does not need plaintiff to reply to the answer; instead, the court automatically assumes that plaintiff has denied the factual statements and affirmative defenses raised in that answer.

ORDER

IT IS ORDERED that plaintiff Eric Rodriguez's reply to the answers, dkts 25, will be placed in the court's file but will not be considered.

Entered this 16th day of December, 2014.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge